

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OXYLABS, UAB,

Petitioner

v.

BRIGHT DATA LTD.,

Patent Owner

Case IPR2023-01425

Patent No. 11,206,317

PATENT OWNER'S PRELIMINARY SUR-REPLY¹

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-14

¹ The filing of this paper was authorized by the Board. Paper 7 at 2.

In Paper 6, Patent Owner explained that, if this IPR is instituted, Patent Owner could be forced to defend itself against the Goodell reference in this IPR and against the Blossom system (*i.e.*, Goodell’s prototype discussed in the Goodell reference) in the related district court case. Paper 6 at 22-23 (*General Plastic* factor 3), 25 (Petitioner’s Proposed factor 8), 26 (*Fintiv* introduction), and 28-29 (*Fintiv* factors 4 and 6); *see also* EX. 1005 at 109.² Therefore, instituting this IPR would risk an inefficient use of resources, significant prejudice to Patent Owner, duplicative efforts, and potentially conflicting decisions. *Id.*

Petitioner’s Reply does not show that the Blossom system is different from the Goodell reference in order to mitigate these negative results. *See generally* Paper 8. Petitioner’s Reply arguments fail for at least three reasons:

First, Petitioner states that “Blossom is a PAN, but not all PANs are Blossom”. Paper 8 at 2. Petitioner does **not** state that the petition’s analysis of PANs is inapplicable to Blossom. Therefore, Petitioner does not show that the petition’s analysis is founded in “non-Blossom aspects”. *Contra* Paper 8 at 2.

Second, Petitioner admits that its district court invalidity contentions based

² Director Vidal’s June 21, 2022 Memorandum only addressed the effect of a stipulation on the Board’s *Fintiv* analysis, not the *General Plastic* analysis.

on Blossom at least partially rely on Goodell's disclosures. Paper 8 at 1 and 3.

Petitioner does **not** state that, if Petitioner pursued invalidity based on Blossom in district court, then Petitioner would not rely on Goodell's disclosures for support.³

Third, Petitioner does **not** address all limitations of claim 1 or any limitations of dependent claims 8, 16, 17, 22, 29, or 30 in the Reply. Petitioner's invalidity arguments based on Goodell are substantially similar to those based on Blossom. According to Petitioner, Blossom allegedly meets all limitations of the challenged claims in view of Goodell's disclosures:

- **[1pre]:** Paper 1 at 34 (citing EX. 1005 at 118-119 discussing the Blossom system); *see also* Paper 1 at 28-29; *see also* EX. 1005 at 29-30, 112, and 120.
- **[1.1]:** Petitioner admits this analysis applies to Blossom. Paper 8 at 2; *see also* Paper 1 at 35 (citing EX. 118-119); *see also* Paper 1 at 28-29; *see also* EX. 1005 at 118 (referencing section 3.3.2 entitled "Selecting Perspectives" at 107-109); *see also* EX. 1005 at 109-121 (section 3.4 entitled "Implementation (Blossom)") and 146-147 (discussing "in our prototype...").
- **[1.2]:** Paper 1 at 28-29 (specifically note 3); *see also* EX. 1005 at 118-119.
- **[1.3]:** Petitioner admits that at least the "first way" discussed in the petition is

³ The fact that Petitioner may present additional evidence related to Blossom in district court (*e.g.*, source code) does not mitigate the negative results.

used by Blossom. Paper 1 at 31 (“[Another way] to achieve this goal (used by Blossom) is to “maintain connection state within the network” ...”); *see also* EX. 1005 at 118-120.

- **[1.4]:** EX. 1005 at 118-119; *see also* analysis of [1.1].
- **[1.5]:** EX. 1005 at 118-119; *see also* analysis of [1.2].
- **[1.6]:** EX. 1005 at 118-120; *see also* analysis of [1.3].
- **[8]:** Paper 1 at 28-29; *see also* EX. 1005 at 112, 116, and 118-119.
- **[16]:** Paper 1 at 44-45 (citing EX. 1005 at 118); EX. 1003 at ¶93; *see also* Paper 1 at 28-29 (showing Fig. 3.8 entitled “Client Perspective Diagram: Blossom”); *see also* EX. 1005 at 118-119.
- **[17]:** Paper 1 at 45 (citing EX. 1005 at 118-119); *see also* EX. 1005 at 120.
- **[22]:** Paper 1 at 28-29; *see also* EX. 1005 at 118 (referencing section 3.3.2 entitled “Selecting Perspectives” at 107-109).
- **[29]:** Petitioner admits this analysis applies to Blossom. Paper 1 at 47; *see also* Paper 1 at 28-29; *see also* EX. 1005 at 118-121.
- **[30]:** Paper 1 at 48 (citing EX. 1005 at 120-121); EX. 1003 at ¶104; *see also* EX. 1005 at 118-119 and 225-226.

For at least the reasons discussed in the Patent Owner Preliminary Response (Paper 6) and in this Preliminary Sur-Reply, institution should be denied.

Respectfully submitted,

Date: February 14, 2024

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CERTIFICATE OF COMPLIANCE

This paper does not exceed three pages in length, in compliance with the Board's authorization. Paper 7 at 2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies this paper was served on the undersigned date via email, as authorized by Petitioner, at the following email addresses:

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